

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Interstate Power and Light Company	:	
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Petition For Approval Of Sale of	:	
Utility Assets Pursuant To Sections 7-	:	
102; Approve the Discontinuance of	:	
Service Pursuant to 8-508;	:	Docket No. 05-0835
Cancellation of Tariffs Pursuant to 9-	:	
201 of the Public Utilities Act; and the	:	
Granting of All Other Necessary and	:	
Appropriate Relief.	:	

**REBUTTAL TESTIMONY OF
MICHAEL W. HASTINGS**

JO-CARROLL ENERGY, INC.

**STATE OF ILLINOIS
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REBUTTAL TESTIMONY OF MICHAEL W. HASTINGS

1 **Q. Please state your name, title and business address for the record.**

2 A. My name is Michael W. Hastings. I am the President and Chief Executive Officer
3 of Jo-Carroll Energy, Inc. (“Jo-Carroll”), and my business address is 793 U.S.
4 Route 20 West, Elizabeth, Illinois 61028-0390.

5

6 **Q. Did you present direct testimony in the instant proceeding?**

7 A. Yes.

8

9 **Q. What is the purpose of your rebuttal testimony?**

10 A. The purpose of my testimony is to respond to the direct testimony submitted by
11 the Staff (“Staff”) of the Illinois Commerce Commission (“Commission”).
12 Specifically, I will respond to issues addressed in portions of the direct testimony
13 or revised direct testimony of Eric Lounsberry, Ronald Linkenback, Cheri Hardin,
14 and Dianna Hathhorn.

15

16 **Q. How is your rebuttal testimony organized?**

17 A. After providing some general observations regarding the testimony submitted by
18 Staff and regarding the recent amendments to the Public Utilities Act (“Act”), I
19 will respond to the various questions raised by the Staff witnesses.

20

21 **I. GENERAL OBSERVATIONS REGARDING STAFF’S**
22 **DIRECT TESTIMONY AND RECENT AMENDMENTS TO THE ACT**
23

24 **Q. Do you have any general reactions to the direct testimony filed by Staff?**

25 A. Yes. As a whole, it was encouraging that the direct testimony filed by the Staff
26 was positive, with most of the issues raised by Staff having to do with requests for
27 additional information. In this regard, we were pleased that it was helpful to the
28 process that Jo-Carroll intervened and presented its direct testimony early, to
29 allow for the more in-depth inquiry at this juncture of the proceeding. We also
30 were pleased to see that no intervenor presented direct testimony in this case. Jo-
31 Carroll has worked hard to “reach out” to many persons, companies,
32 municipalities, and other stakeholders in an ongoing effort to educate, understand
33 concerns, provide candid information, and foster a dialogue consistent with Jo-
34 Carroll’s approach to conducting itself as a cooperative. Jo-Carroll will, of
35 course, continue to do this. However, Jo-Carroll believes that the absence of
36 intervenor direct testimony is a meaningful testament to how hard Jo-Carroll has
37 worked and continues to work to reach out to its current and future customers.

38

39 **Q. Are there other developments that are relevant to this testimony?**

40 A. Yes. On May 4, 2006, Governor Blagojevich signed into law Senate Bill 2807.
41 The Bill was signed by the Governor after unanimous passage by both the Illinois
42 House and the Illinois Senate.

43

44 **Q. What is the significance of the passage of Senate Bill 2807?**

45 A. There are several significant aspects of the passage. First and most obviously,
46 Senate Bill 2807 clarifies the law of Illinois on an issue that was raised by the
47 Staff as a potential issue in this proceeding – namely, whether Jo-Carroll was
48 entitled to provide natural gas service as an unregulated cooperative to non-
49 residential customers. That issue is now definitively resolved by the Bill's
50 passage. Senate Bill 2807 unequivocally provides that Jo-Carroll is authorized by
51 law to provide natural gas service as a cooperative to all classes of customers,
52 including residential, commercial, and industrial customers.

53

54 Staff has candidly and in good faith modified its direct testimony to reflect that
55 fact. Jo-Carroll appreciates Staff's recognition of the effect of the legislation and
56 its willingness to modify its witnesses' testimony accordingly. The effect should
57 be to reduce the number of contested or potentially contested issues in this
58 proceeding – a result that Jo-Carroll certainly supports.

59

60 The timing of the passage of Senate Bill 2807 and the manner in which it was
61 passed are also significant. Quite obviously, the Bill was passed to clarify the law
62 during the pendency of this proceeding. It is my understanding of the law that

63 when the General Assembly acts to clarify the law at or around the time that the
64 issue clarified by the legislation is being litigated, that clarification of the law is
65 entitled to significant respect and attention in the litigation.

66
67 Moreover, in this particular case, the unanimous, bi-partisan passage of the
68 legislation is very telling. *Every* elected official of the State of Illinois who was
69 asked to cast a vote on Senate Bill 2807 voted in favor of its passage. That fact
70 communicates quite clearly that the State's elected leaders all share the view that
71 the proposed Jo-Carroll/IPL transaction is a positive development that is in the
72 best interest of the electric and gas customers of Northwestern Illinois. This does
73 not mean, of course, that the Commission should not examine the transaction
74 pursuant to its duty. However, the only realistic interpretation of the unanimous
75 action of the Governor and the General Assembly is that the transaction is viewed
76 in an overwhelmingly positive light by the State's elected representatives.

77
78 **II. POTENTIAL FERC JURISDICTION DOES NOT**
79 **IMPACT ANY ISSUES RELEVANT TO THE INSTANT PROCEEDING**

80
81 **Q. Please summarize the FERC jurisdictional issues Staff raises in its direct**
82 **testimony.**

83 **A.** Staff Witness Lounsberry interjects a new issue regarding potential Federal
84 Energy Regulatory Commission ("FERC") jurisdiction of Jo-Carroll's natural gas
85 service in his revised direct testimony on page 10, line 198. That is, in light of
86 Senate Bill 2807, which clarifies that the Commission will not rate regulate Jo-
87 Carroll's natural gas operations, Mr. Lounsberry suggests, although apparently he

88 does not conclude, that Jo-Carroll might be subject to regulation by FERC. Mr.
89 Lounsberry questions whether such potential FERC regulation might modify the
90 terms or conditions of the proposed transaction between Jo-Carroll and Interstate
91 Power and Light Company (“IPL”) or might otherwise be relevant to the
92 Commission’s analysis and approval of the proposed transaction.

93
94 **Q. What is your response to Staff’s testimony regarding FERC jurisdiction?**

95 A. Although Jo-Carroll appreciates that Mr. Lounsberry was merely raising a
96 potential concern, Jo-Carroll does not believe Mr. Lounsberry’s analysis
97 regarding potential FERC jurisdiction is correct. Further, none of the FERC-
98 related issues raised by Mr. Lounsberry would change the terms or conditions of
99 the transaction between Jo-Carroll and IPL.

100
101 **Q. Why do you believe that Mr. Lounsberry’s analysis regarding FERC**
102 **jurisdiction is incorrect?**

103 A. Jo-Carroll has analyzed and addressed the FERC jurisdiction issues. Attached as
104 Exhibit JCE 3.1 to this rebuttal testimony and incorporated herein by this
105 reference is an opinion letter written by Joshua Menter, an attorney with extensive
106 experience addressing FERC natural gas issues, with the law firm of Miller, Balis
107 and O’Neil, on the FERC jurisdiction issues faced by Jo-Carroll. I will not
108 attempt to restate Mr. Menter’s analysis and conclusions. However, it is quite
109 plain from the letter that Jo-Carroll is aware of the potential FERC issues and has
110 retained specialized, expert professional advice on analyzing those issues. Thus,

111 to the extent Mr. Lounsberry's testimony suggests that Jo-Carroll is unaware of
112 these potential issues, it is incorrect. Jo-Carroll is aware of the FERC jurisdiction
113 issues that it faces, and is prepared to address those issues.

114

115 **Q. How do you respond to the suggestion that the potential of FERC regulation**
116 **may somehow alter the terms or conditions of the transaction between Jo-**
117 **Carroll and IPL?**

118 A. This suggestion is incorrect. The potential that Jo-Carroll may be regulated by
119 FERC does not alter the manner in which Jo-Carroll will purchase the natural gas
120 assets being sold by IPL. Further, the potential for FERC regulation does not
121 cause Jo-Carroll to rethink the purchase price it has agreed to pay for the IPL
122 natural gas assets.

123

124 Jo-Carroll agrees that FERC jurisdiction, even on a limited basis, will add
125 regulatory costs that must be borne by the natural gas customer/members/owners
126 of Jo-Carroll. Since Jo-Carroll is a not-for-profit Illinois corporation, there are no
127 shareholders to absorb additional costs – only member-owners who are the
128 customers. However, Jo-Carroll believes that the cost of addressing any FERC
129 jurisdiction issues will, in the long run, be less than the cost of rate regulation by
130 the Commission.

131

132

132 **III. UPDATE REGARDING THE STATUS OF VARIOUS AGREEMENTS**

133

134 **Q. Mr. Lounsberry also notes that the operating agreement between IPL and**
135 **Jo-Carroll relating to certain natural gas assets is not finalized. What is the**
136 **status of that agreement?**

137 A. It is my understanding that a copy of the executed natural gas operating
138 agreement between Jo-Carroll and IPL will be submitted in the rebuttal testimony
139 filed by IPL in this case.

140

141 **Q. Mr. Lounsberry also notes that the gas supply contract between IPL and Jo-**
142 **Carroll is not finalized. What is the status of that agreement?**

143 A. It is my understanding that the natural gas transition services agreement between
144 IPL and Jo-Carroll, which includes gas supply provisions, will be submitted in the
145 rebuttal testimony filed by IPL in this case.

146

147 **Q. Staff witness Ronald Linkenback submitted testimony regarding certain**
148 **agreements relating to the electric portion of the transaction. What is the**
149 **status of those agreements?**

150 A. Mr. Linkenback listed a number of agreements in his direct testimony that he
151 would like to review. Specifically, on page 5, line 121, Mr. Linkenback wanted
152 to review the interconnection agreement between Dairyland Power Cooperative
153 ("Dairyland") and Jo-Carroll as it related to four additional delivery points
154 necessitated by the acquisition. Attached to this testimony as Exhibit JCE 3.2 is

the all-requirements power (“APC”) Agreement between Jo-Carroll and Dairyland covering power sales and interconnection arrangements, among other topics. The language addressing interconnection appears at page 2, paragraph 2. Also attached to the Exhibit JCE 3.2 Agreement is Schedule B, which lists the interconnection points between Jo-Carroll and Dairyland.

Q. Do you have any additional comments regarding this APC Agreement?

A. Yes. Jo-Carroll and Dairyland have agreed that Jo-Carroll may purchase its power and energy needs for the service area being acquired from IPL through June 30, 2009. After that date, Dairyland will have a “right of first refusal” to match price and terms of any future power and energy supply arrangements Jo-Carroll makes for the new service area. Dairyland will continue to supply Jo-Carroll with power and energy as in the past for Jo-Carroll’s present service area. I would note also that the APC Agreement’s provisions concerning interconnection are not as lengthy or detailed as the interconnection agreement being proposed between IPL and Jo-Carroll. (It is my understanding that the transmission to distribution interconnection agreement between IPL and Jo-Carroll is being submitted in the rebuttal testimony of IPL in this case.) However, the APC interconnection provisions have served Jo-Carroll and Dairyland well for many decades, and there is a well-established working business relationship between Jo-Carroll and Dairyland that will support a smooth transition at the time of Jo-Carroll’s IPL acquisition closing and will foster an ongoing high level of supply quality, reliability, and customer service.

178

179 **Q. Are there any other agreements referenced in Mr. Linkenback's testimony**
180 **relating to the electric service portion of this case that need to be addressed?**

181 A. Yes. In Mr. Linkenback's direct testimony at page 5, lines 115-116, he requested
182 a copy of the power supply agreement between IPL and Jo-Carroll. It is my
183 understanding that IPL is planning to include a copy of the executed power supply
184 agreement between IPL and Jo-Carroll in the rebuttal testimony IPL files in this
185 case. I would note that Jo-Carroll will be purchasing power and energy under the
186 IPL RES-5 tariff on file at the FERC rather than the WP&L W3A wholesale rate,
187 as referenced in Mr. Linkenback's testimony and IPL Exhibit A, Schedule 5.18.
188 Jo-Carroll and IPL plan to execute an appropriate modification to the asset
189 purchase agreement between the parties regarding this change in wholesale rates.
190 It is also my understanding that the IPL to Dairyland transmission to transmission
191 interconnection agreement is being submitted in the rebuttal testimony of IPL in
192 this case. Mr. Linkenback actually requested a copy the American Transmission
193 Company (ATC) to Dairyland interconnection agreement. However, that
194 agreement has not been executed yet because the sale of transmission assets from
195 IPL to ATC has not yet occurred. Therefore, the IPL to Dairyland
196 interconnection agreement is the present relevant agreement.

197

198 Finally, Mr. Linkenback requested to review a copy of the interconnection
199 agreement between ATC and JCE. Since the sale of the IPL transmission assets
200 to ATC has not yet occurred, my understanding is that the relevant agreement that

201 Mr. Linkenback wants is the IPL to Jo-Carroll interconnection agreement. It is
202 my understanding that IPL plans to file a copy of this executed agreement with its
203 rebuttal testimony in this case.

204

205 **Q. Staff witness Dianna Hathhorn submitted testimony regarding certain**
206 **portions of the Asset Purchase Agreement (“APA”). Do you want to respond**
207 **to that testimony?**

208 A. Yes. Ms. Hathhorn provides generally supportive testimony regarding the
209 transaction, from an accounting perspective. My understanding is that Ms.
210 Hathhorn is not a lawyer, and did not intend to present legal opinions in her
211 testimony. However, Ms. Hathhorn makes a statement regarding the provision in
212 the environmental liabilities section of the APA that is not accurate. Specifically,
213 she fails to recognize that IPL has retained some liability for the coal tar sites.
214 Hopefully, Ms. Hathhorn will review that portion of the APA and clarify, refine,
215 or revise her position in her rebuttal testimony.

216

217 **IV. JO-CARROLL WILL TAKE NUMEROUS**
218 **STEPS TO ADDRESS CUSTOMER SERVICE**
219 **FOR ITS NEW COMMERCIAL AND INDUSTRIAL CUSTOMERS**
220

221 **Q. Please summarize Staff’s testimony about service issues relating to the**
222 **largest commercial and industrial customers it seeks to acquire from IPL.**

223 A. Mr. Linkenback opines that IPL’s current Illinois commercial and industrial
224 customers may not see, at least initially, the same level of service from Jo-Carroll
225 as they were used to receiving from IPL.

226

227 **Q. How do you respond to Staff's testimony regarding customer service?**

228 A. Jo-Carroll recognizes that with respect to IPL's largest industrial customers, Jo-
229 Carroll will face a learning curve. However, although certainly very important,
230 these issues should be kept in proper perspective. As Mr. Linkenback's testimony
231 candidly acknowledges, this issue *can be* and *is being* dealt with. Additionally,
232 the fact is that there are presently only about three (3) IPL industrial customers
233 that are significantly larger than Jo-Carroll's present largest members.

234

235 **Q. How is Jo-Carroll addressing the issue of customer service to these**
236 **customers?**

237 A. Jo-Carroll is taking a number of proactive steps to assist with customer service to
238 the largest commercial and industrial customers that it seeks to service.

239

240 For example, to assist Jo-Carroll in meeting the special needs of the largest IPL
241 customers Jo-Carroll will serve, as well as all the IPL commercial and industrial
242 customers that Jo-Carroll will serve, Jo-Carroll has entered into a Technical
243 Services Agreement with GEN~SYS Energy ("GEN~SYS"). A copy of this
244 Agreement is attached to this testimony as Exhibit JCE 3.3 and incorporated
245 herein by this reference. Jo-Carroll plans to utilize the services of the GEN~SYS
246 team to assist with service to commercial and industrial customer/members.

247

In addition, Jo-Carroll will utilize the services of Mr. Craig Harmes, Manager of Business Development at Dairyland, as needed with present and future commercial and industrial customer/members in the newly-acquired service area. Mr. Harmes biography is attached to this testimony as Exhibit JCE 3.4 and incorporated herein by this reference. In addition to having access to and support from the resources and expertise of GEN~SYS and Dairyland, Jo-Carroll possesses significant internal resources to address issues associated with commercial and industrial customers, including power quality, availability of power, and billing issues.

As discussed at page 3 of my amended direct testimony, Jo-Carroll has a professional staff with many years of experience, including experience with significant expansions of customer base and with service issues relating to large commercial and industrial customers. This experience has also increased since this case was filed over five months ago given the personal visits Jo-Carroll and IPL senior staff employees have made to the largest IPL industrial customers in the service area being acquired.

Q. In his response to Jo-Carroll's Data Request 2.13 to the Commission Staff, Mr. Linkenback provided some specific suggestions regarding manpower, training, and other improvements. What is your reaction to those suggestions?

270 A. Mr. Linkenback makes a number of thoughtful and reasonable suggestions for
271 ways to enhance service quality and reliability. Jo-Carroll has already taken steps
272 consistent with Mr. Linkenback's suggestions. For example, as described above,
273 Jo-Carroll has already retained GEN~SYS and will utilize Mr. Harmes of
274 Dairyland to assist Jo-Carroll with large commercial and industrial issues. During
275 this transition period, Jo-Carroll employees will be involved in resolving issues
276 associated with large commercial and industrial members. Specific training of Jo-
277 Carroll employees will occur in this process as well. Regarding system
278 improvements, Jo-Carroll already plans to operate multiple service centers to
279 improve outage response time. Jo-Carroll plans to re-open the Savanna Alliant
280 Energy office for bill payment and other customer services as well as have crews
281 operate from the Savanna facility.

282

283 Further, Jo-Carroll is presently advertising to fill one additional journeyman
284 lineman position. Depending upon the pool of applicants, Jo-Carroll may hire
285 two journeyman linemen within the next month. This is due primarily to the
286 service needs associated with the new service area. However, Jo-Carroll is going
287 ahead with this step now so that new personnel can become familiar with Jo-
288 Carroll's present work practices and procedures. These will be union positions.

289

290 In addition, Jo-Carroll plans to hire and train additional customer service
291 representatives to assist with service to all new member/customers, including
292 large commercial and industrial member/customers. These customer service

representatives also will be trained so that they are knowledgeable on both IPL's current policies as well as Jo-Carroll's policies so that they may explain differences to the new Jo-Carroll member/customers. These likewise will be union positions.

Jo-Carroll already plans to provide most of the same services presently offered by IPL to its customers. These services include multiple bill payment locations and online services. Jo-Carroll is already involved with civic organization support and economic development efforts. These activities almost certainly will increase after the acquisition is finalized. Jo-Carroll is evaluating some of the additional steps suggested by Mr. Linkenback and within its reasonable practical and budgetary ability, very likely will move to implement those steps.

V. JO-CARROLL'S GAS AND ELECTRIC RATES

Q. Please summarize Staff's direct testimony on rate issues.

A. Ms. Harden has recommended that Jo-Carroll file its proposed gas and electric rate schedules in Jo-Carroll's rebuttal testimony for her comment.

Q. How do you respond to Staff's request for Jo-Carroll's rate schedules?

A. Jo-Carroll has developed "unapproved" proposed electric and natural gas rate schedules for the new IPL service area to be acquired by Jo-Carroll. The rates are "unapproved" because they have not been reviewed and approved by Jo-Carroll's Board of Directors. Copies of the "unapproved" proposed electric and natural gas

rate schedules are attached hereto and made a part hereof as, respectively, Confidential Exhibit JCE 3.5 and Exhibit JCE 3.6. Confidential Exhibit JCE 3.5 includes the electric rate schedules developed to date by Jo-Carroll. Not all the rates for the IPL electric service area being acquired by Jo-Carroll have been developed – this is an ongoing process. Jo-Carroll hopes to have this rate project completed before the end of June, 2006. Additional electric rate information will be filed at the Commission on a supplemental basis as soon as available.

Q. Do you have any general comments concerning Jo-Carroll's electric rates?

A. Yes. Unsurprisingly, these proposed rates are higher than IPL's present rates, since IPL has not had an electric rate case filing in 22 years. However, Jo-Carroll's proposed rates for the newly-acquired IPL service area are *less* than Jo-Carroll's present rates for its current members. These differences in rates will be equalized over the first five to seven years after the acquisition is completed. Additionally, these proposed rates reflect a different power supply and power supply cost than Jo-Carroll's present power supply arrangements with Dairyland. Jo-Carroll will be obtaining the power and energy for the new service area from IPL at a lower cost than Jo-Carroll's present power supply cost from Dairyland. Also, these rates have not been reviewed or approved by the Jo-Carroll board of directors. This approval process will take place later this year, probably during August or September 2006. Finally, although not yet completed, the attached proposed electric rates represent most of the total electric load in the IPL service area. As a result, it is not anticipated that these proposed rates will vary

significantly from the electric rates that will be presented for approval to the Jo-Carroll board of directors. Increases in power cost from IPL would be the primary reason these preliminary rates would increase between now and their implementation.

Q. Do you have any comments regarding Jo-Carroll's proposed natural gas rates?

A. Yes. As stated in my direct testimony, Jo-Carroll's plan is to implement the present IPL natural gas rate tariffs on file at the Commission. The attached Exhibit JCE 3.6 is Jo-Carroll's first attempt to transfer these IPL natural gas tariffs to Jo-Carroll proposed rates. These preliminary proposed natural gas rates also have not been presented to the Jo-Carroll board of directors for review and approval. These will be considered in the same time frame as the preliminary proposed electric rates.

Q. Are there other issues in Ms. Harden's direct testimony would you like to address?

A. Ms. Harden has requested that Jo-Carroll respond to the concerns raised by the City of Galena as a gas customer. I would note first that IPL does not serve the City of Galena with natural gas; the City of Galena is served by a different natural gas utility. Likewise, Jo-Carroll has no plans to serve Galena with natural gas. Ms. Harden also wishes to review how Jo-Carroll plans to respond to the other intervenors' concerns. As noted above, no intervenor has filed testimony in this

case. The fairly generic statements listed in a petition for leave to intervene obviously do not constitute evidence, and the lack of specificity makes it very hard for Jo-Carroll to respond. Having said that, Jo-Carroll and IPL have met with and are willing to meet and work with any of the intervenors or any other person who has questions or concerns regarding this transaction.

Q. Do you have any other comments?

A. Yes. Jo-Carroll recognizes that this type of transaction does not regularly come before the Commission, particularly since non-Commission regulated cooperatives such as Jo-Carroll rarely find themselves involved in a Commission proceeding. Jo-Carroll recognizes that the Commission Staff has acted in good faith in raising a number of issues and asking for additional information, and Jo-Carroll continues to be committed to providing the requested information and addressing the relevant issues.

However, the particulars of Staff's inquiry should not obscure the significant, tangible benefits afforded to electric and natural gas customers through the cooperative model. Those benefits are detailed in my amended direct testimony at pages 11 to 15. Jo-Carroll's cooperative business model results in local, customer/member control of a not-for-profit entity committed to and run by the member owners, through the member-elected Board of Directors (each of whom is him or herself a member owner). This cooperative model stands in distinct contrast to the investor-owned utility model that is typical of the entities that are

385 normally before the Commission. Jo-Carroll has loyally and effectively served
386 the people of northwestern Illinois for over 65 years. Jo-Carroll's long-standing
387 commitment to the betterment of its own community is unquestioned. Jo-Carroll
388 is committed to continuing and expanding that tradition and is eager to bring the
389 benefits of cooperative ownership to additional Illinois electric and natural gas
390 customers.

391

392 Q. **Does this conclude your rebuttal testimony?**

393 A. Yes it does.

394